

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

SEP 16 2011

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

AMANDA B.,	)	2 CA-JV 2011-0053
	)	DEPARTMENT B
Appellant,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 28, Rules of Civil
ARIZONA DEPARTMENT OF ECONOMIC	)	Appellate Procedure
SECURITY and LOTUS M.,	)	
	)	
Appellees.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J19133600

Honorable Leslie Miller, Judge

AFFIRMED

Emily Danies

Tucson  
Attorney for Appellant

Thomas C. Horne, Arizona Attorney General  
By Michelle R. Nimmo

Tucson  
Attorneys for Appellee Arizona  
Department of Economic Security

ESPINOSA, Judge.

¶1 Amanda B. appeals from the juvenile court’s order terminating her parental rights to her daughter, Lotus M., born in October 2008, based on length of time in care and neglect or willful abuse.<sup>1</sup> See A.R.S. § 8-533(B)(8)(c), (B)(2).<sup>2</sup> On appeal, Amanda argues the evidence was insufficient to establish either statutory ground for termination and the court erred in finding termination was in Lotus’s best interests. We affirm.

¶2 On appeal, Amanda generally challenges the sufficiency of the evidence to support termination based on out-of-home placement, and asserts “with a few more months of therapy, which surely is in the near future, she is capable of exercising proper and effective parental control.” Although Amanda does not appear to challenge the services provided,<sup>3</sup> she does assert she would have benefitted, perhaps enough to defeat the motion to terminate her parental rights, had the Department of Economic Security (ADES) continued providing therapy to her.

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<sup>1</sup>The father, whose rights also were terminated, is not a party to this appeal.

<sup>2</sup>Section 8-533(B)(8)(c) provides for termination of parental rights based on a parent’s failing to remedy the circumstances causing the child’s out-of-home placement for fifteen months or longer, and likely being unable to remedy the circumstances in the near future. Section 8-533(B)(2) provides for termination based on neglect or willful abuse of a child. The relevant portion of A.R.S. § 8-201(22)(a), defines neglect as “[t]he inability or unwillingness of a parent . . . of a child to provide that child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes unreasonable risk of harm to the child’s health or welfare.”

<sup>3</sup>Before a parent’s rights may be terminated pursuant to any time-in-care ground found in § 8-533(B)(8), ADES must establish that it made a “diligent effort” to provide appropriate reunification services to the parent. ADES satisfies its statutory duty by providing the parent “with the time and opportunity to participate in programs designed to help her become an effective parent.” *In re Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994).

¶3 In reviewing the sufficiency of the evidence, we do not reweigh it to determine whether we would have made the same factual findings as the trier of fact. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 5, 210 P.3d 1263, 1265 (App. 2009). Rather, we determine only whether substantial evidence exists to support the lower court's findings. *Id.* ¶ 4. "On review, . . . we will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002). To sustain its burden of establishing that termination is in a child's best interests, ADES must prove, by a preponderance of the evidence, that the child either would benefit from the severance or be harmed if the parental relationship continued. *See Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 22, 110 P.3d 1013, 1018 (2005); *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 19, 83 P.3d 43, 50 (App. 2004).

¶4 We view the evidence in the light most favorable to upholding the juvenile court's ruling. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 20, 995 P.2d 682, 686 (2000). Based on allegations of domestic violence and mental health problems, Child Protective Services (CPS), a division of ADES, first became involved with Amanda just after Lotus was born in October 2008, and provided services until March 2009. Three months later, in June 2009, CPS responded to a report that alleged, inter alia, that Amanda had left then eight-month-old Lotus alone in her apartment on several occasions. When the CPS investigator and a police officer arrived at Amanda's apartment, she had shut the door to the apartment and was walking out. Amanda ultimately permitted the investigator to enter the apartment, where she had left Lotus

unattended in her crib. Although CPS offered to establish a safety plan, Amanda instead volunteered, “How about I’ll just give you my baby,” and did just that. Police later discovered two marijuana plants in the bathroom of the apartment, and arrested Amanda. Lotus, whose immunizations were not current when she was removed from Amanda’s care, was placed with a foster family, where she has remained.

¶5 In September 2009, Amanda admitted the allegations in the amended dependency petition, and the juvenile court adjudicated Lotus dependent as to her, ordering her to comply with the case plan tasks and participate in services to further the goal of family reunification. To that end, ADES provided a full array of services, including parenting and stress management classes, individual therapy, child and family team meetings, relapse prevention, drug testing, parent-child relationship therapy, visitation, and case management. In the ensuing months, Amanda participated to varying degrees in the services ADES provided, and the court found that ADES made reasonable efforts to achieve the case plan goal of family reunification.

¶6 In August and September 2010, psychologist Lorraine Rollins evaluated Amanda. Rollins was concerned that Amanda “would not be able to maintain gains once the therapeutic support was taken away,” and noted that Amanda had not consistently participated in all of the ordered services. Also in September 2010, fifteen months after Lotus had been removed from Amanda’s care, the juvenile court found Amanda was in partial compliance with the case plan goals and changed the goal from family reunification to severance and adoption. ADES filed a motion to terminate Amanda’s parental rights to Lotus, alleging as grounds for termination neglect, mental illness or

chronic substance abuse,<sup>4</sup> and out-of-home placement for fifteen months or longer, and that termination was in Lotus's best interests. *See* § 8-533(B)(2), (B)(3), and (B)(8)(c). Following a seven-day contested severance hearing held between December 2010 and March 2011, the court terminated Amanda's rights to Lotus in a May 2011 under-advisement ruling containing its findings of facts and conclusions of law.

¶7 Blake Foundation family therapist Jessica Jordan, who worked as a "parent-child relationship therapist" with Amanda, testified that she could not recommend Amanda have unsupervised visits with Lotus, something she would have expected after six months of therapy. Jordan also testified permanency is "[v]ery important" to a child of Lotus's age and she did not think Amanda would be reunified with Lotus within a reasonable amount of time, even if services were reinstated. Lotus's CPS case manager, Krystal Whipple, testified that Amanda lost her temper with Whipple at virtually every child family team meeting, had told Whipple she wanted to "beat [her] up," and that Amanda's therapist attended all of the meetings with Amanda to "cue[] her to calm down" with Whipple. Whipple asserted that Amanda's increased participation in recent therapy services was "too little too late," and that even if the juvenile court ordered ADES to continue providing services, it would take at least six months before Amanda would be ready to begin the transition to care for Lotus.

¶8 Additionally, although La Frontera clinician Sarah Dawson testified about Amanda's "tremendous" progress in the areas of "anxiety, stress and emotion regulation," she acknowledged she had not seen Amanda and Lotus together, and thus

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<sup>4</sup>The juvenile court found ADES had failed to prove the ground of mental illness or chronic substance abuse.

could not comment on Amanda's parenting skills. Also, even though La Frontera case manager Brandon Gaspar testified he did not see any "barriers" to reunification, Amanda herself acknowledges on appeal that she would need "a few more months of therapy" before she would be capable of caring for Lotus.

¶9 After entering extensive factual findings, as detailed in the juvenile court's under-advisement order,<sup>5</sup> the court noted Lotus had been in an out-of-home placement for more than fifteen months, CPS had made diligent efforts to provide Amanda with appropriate reunification services, Amanda was unable or unwilling to remedy the situation, and she would not be able to care for Lotus in the near future. Relevant portions of the court's ruling follow:

Lotus has been in continuous out of home placement since June 26, 2009. [Amanda] has been provided extensive services including individual therapy, parent-child relationship classes, domestic violence and healthy relationship classes, case management, CFT meetings, substance abuse counseling and monitoring, and visitation. [Amanda's] participation in services throughout the case was limited, with the exception of a two month period after the case plan was changed to severance and adoption. [Amanda] has again failed to actively participate since January, 2011. Despite the provision of multiple services, [Amanda] has failed to show significant progress and still requires supervised visitation. Some witnesses expressed concern that even with ongoing services, [Amanda] may never be capable

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<sup>5</sup>Amanda argues the juvenile court misrepresented certain factual findings in its ruling. Having examined the record carefully, we conclude there was evidence, albeit in some instances disputed, to support the court's findings, which we will not disturb on appeal. *See Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004) (juvenile court, as fact finder, resolves conflicts in evidence and credibility of witnesses). Moreover, based on the entire record, there was ample evidence to support the court's termination order, even without the disputed findings.

of independently parenting her child. Given [Amanda's] progress, Ms. Whipple testified that a transition would not be able to be completed for at least six months after the initiation of unsupervised visitation. [Amanda] had not had stable housing or employment and is presently unemployed.

[Amanda] has failed to recognize Lotus' developmental issues and appreciate the need for ongoing services to address those problems. [Amanda] has not been able to sustain long term progress and is not likely to be capable of exercising proper parental control in the near future.

¶10 We conclude there was more than ample evidence to support termination based on the ground of out-of-home placement, as illustrated in the quoted portion of the juvenile court's ruling. We therefore need not consider the alternative ground of neglect. *See Michael J.*, 196 Ariz. 246, ¶ 27, 995 P.2d at 687 (if termination upheld on any one ground, other grounds need not be addressed).

¶11 Finally, although Amanda challenges the juvenile court's conclusion that termination of her parental rights is in Lotus's best interests, she fails to address the sufficiency of the evidence supporting the court's specific finding that the foster parents, who "have responded to all of Lotus' special needs and advocated on her behalf . . . [and] have provided structure and consistency to address [her] behavioral issues [which] have improved significantly while in their care," are willing to adopt Lotus, and that she is an adoptable child. At the severance hearing, the foster mother, who has cared for Lotus since she was removed from Amanda, testified she has provided for Lotus's needs and is willing to adopt her. Whipple testified the foster home is safe and appropriate, the foster family wants to adopt Lotus, and severance is in Lotus's best interests. Most importantly, Amanda has not meaningfully disputed the court's finding that severance will provide

Lotus with the much-needed permanency she needs. We do not reweigh evidence on review and will accept the court’s findings as long as they are supported by reasonable evidence, as they are here. *See Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 6, 100 P.3d 943, 945 (App. 2004) (“current adoptive plan is one well-recognized example” of benefit derived from termination of parental rights).

¶12 For all of these reasons, the juvenile court’s May 2011 order terminating Amanda’s parental rights to Lotus is affirmed.

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge